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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,806	02/23/2004	Jan Roelof van der Meulen	1203.080	5460
7590 Liniak, Berenato & White Ste. 240 6550 Rock Spring Drive Bethesda, MD 20817			EXAMINER QIN, JIANCHUN	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 08/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/782,806

Applicant(s)

MEULEN, JAN ROELOF VAN DER

Examiner

Jianchun Qin

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2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartholomae (U.S. Pat. No. 976718).

Regarding claim 1, Bartholomae teaches percussion musical instrument (Figs. 1-4), comprising: a set of clave blocks (j, j') each comprising a rigid body made of solid material (Figs. 1 and 3), said body having an open cavity (k and m) therewithin defined solely by said solid material (Figs. 1-4); and said bodies having substantially equal exterior dimensions (as shown in Fig. 2, j and j' have substantially equal exterior dimensions) and different volumes of said open cavities (as shown in Fig. 2, sockets k in j and j' have the same volume but the slot m in j is smaller than that in j') therewithin provided to generate musical tones of a variety of pitches (page 1, lines 50-54).

Regarding claim 4, the teaching of Bartholomae includes: said body of at least one of said clave blocks has a mounting ring (i).

Regarding claims 7 and 8, Bartholomae teaches: said bodies of different volumes having different thickness of said solid material (because the volume of the slot m in j is

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different from that in j'); said cavities include openings having different perimeters (because the volume of the slot m in j is different from that in j').

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae (U.S. Pat. No. 976718).

Regarding claim 2 and 3, Bartholomae teaches the percussion musical instrument that includes the subject matter discussed above except: said set includes three clave blocks including a low pitch clave block provided to generate a low pitch tone, a medium pitch clave block provided to generate a medium pitch tone and a high pitch clave block provided to generate a high pitch tone.

However, in view of the teaching of Bartholomae, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the invention of Bartholomae to make three clave blocks corresponding to three different favorable values of pitch tone, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae in view of Simons et al. (U.S. Pat. No. 6091009).

Regarding claims 5 and 6, Bartholomae does not mention expressly: said body of each of said clave blocks is made of plastic material; said body of each of said clave blocks is made by injection molding process.

Simons et al. teach a block-type percussion musical instrument (Figs. 1-4), including a body (23) having an open cavity (21). The teaching of Simons et al. includes: said body is made of plastic material (col. 3, lines 49-65); said body is made by injection molding process (col. 3, lines 49-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Bartholomae as taught by Simons et al., in order to, at least, avoids the fragile nature of agogo chambers made from wood (Simons et al., col. 3, lines 56-65).

### ***Response to Arguments***

6. Applicant's arguments received 06/29/2007 with respect to claims 1-8 have been considered but they are not persuasive.

Claims 1-8 are rejected as new grounds have been found from the prior art references (U.S. Pat. No. 976718 to Bartholomae and U.S. Pat. No. 6091009 to Simons et al.) to teach, either individually or in combination, the claimed invention. Detailed response is given in sections 1-5 as set forth above in this Office Action.

In response to Applicant's argument that "[o]ne of ordinary skill in the musical art would not interpret the rattle-type sounding toy as the set of clave blocks", the Examiner holds the position that, giving the phrase "a set of clave blocks" the broadest reasonable interpretation, Bartholomae does disclose or teach or suggest all the elements, including their structure and configuration, of the percussion musical instrument recited in claim 1. The argument is persuasive, and the rejection therefore stands.

The rest of the Applicant's arguments are moot in view of the new ground(s) of rejection.

#### ***Prior Art Citations***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Cohen (U.S. Pat. No. 3893363) is entitled "Kit particularly useful for mounting percussion instruments to a stand".

2) Kuijpers (U.S. Pat. No. 3595119) is entitled "Xylophone like sound producing unit".

3) deArmas (U.S. Pat. No. 4362080) is entitled "Staccato cowbell".

4) Cohen et al. (U.S. Pat. No. 4898061) is entitled "Block-type percussion instrument".

5) Shimoda et al. (U.S. Pat. No. 4779507) is entitled "percussion musical instrument".

**Contact Information**

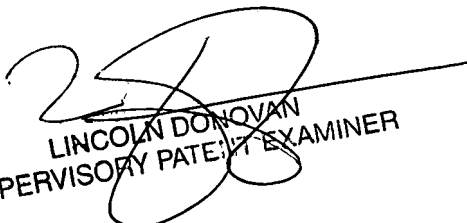
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jianchun Qin  
Examiner  
Art Unit 2837

JQ JQ

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER